

Home and Community-Based Services (HCBS) Rule – South Carolina Statewide Transition Plan and Heightened Scrutiny Category 3 settings

Public Webinar
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Kelly Eifert, Ph.D.
Project Manager

South Carolina Department of Health and Human Services (SCDHHS)

Agenda

- Introduction
- HCBS Rule – Overview
- Statewide Transition Plan
 - Overview
 - Revisions
- Heightened Scrutiny – Category 3 settings
 - Definition and identification
 - Process overview
 - Review outcomes
- Public Comment
- Comments and Questions

HCBS Rule - Overview

HCBS Settings Rule - Overview

- HCBS Settings Rule impacts all SCDHHS 1915(c) HCBS waiver programs
- Centers for Medicare and Medicaid Services (CMS) announced the HCBS rule Jan. 16, 2014
- It was effective March 17, 2014
 - All states must be compliant by **March 17, 2023** (for existing providers and programs)
- Two areas of focus:
 - Person-centered service planning
 - HCBS requirements

HCBS Settings Rule – Overview *(cont.)*

- Purpose (1):
 - Focus on the quality of beneficiaries' experiences
 - Enhance the quality of HCBS
 - Ensure beneficiaries have full access to the benefits of community living
- HCBS should:
 - Take place in an integrated setting
 - Give beneficiaries access to their community
 - Focus on what beneficiaries' goals are, what is important to them and what is important for them
 - Provide beneficiaries with *meaningful* choices

Independent • Integrated • Individual

HCBS Settings Requirements

- The setting is integrated in and supports full access to the greater community including opportunities to:
 - Seek employment and work in competitive integrated settings
 - Engage in community life
 - Control personal resources
 - Receive services in the community
- The setting is selected by the person from options which include non-disability specific settings (2)

HCBS Settings Requirements *(cont.)*

- Ensures a person's rights of privacy, dignity, respect and freedom from coercion and restraint
- Optimizes, but does not regiment, individual initiative, autonomy and independence in making life choices
- Facilitates individual choice regarding services and supports, and who provides them (3)

HCBS Settings Requirements: Residential

- People must have a lease
- Person has privacy in their sleeping/living unit
 - Lockable by the person
 - Choice of roommate
 - Freedom to furnish or decorate
- People must have a key to or way to lock their home and room
 - Only appropriate staff have the same key (not **all**)
- People must have access to food at all times
- People must be able to have visitors at any time
- People have the freedom and support to control own schedules and activities
- The setting is physically accessible to the person (4)

HCBS Settings Requirements

- CMS has specified settings that are **not** Home and Community Based (HCB) (5):
 - A nursing home
 - An Institution for Mental Disease (IMD)
 - An Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID)
 - A hospital
 - Other locations that have qualities of an institutional setting

HCBS Settings Requirements *(cont.)*

- Settings that have qualities of an institution (6):
 - Any setting located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment
 - Any setting in a building on the grounds of, or immediately adjacent to, a public institution*
 - Or any other setting that has the effect of isolating individuals receiving home and community-based services from the broader community

** A public institution is defined as an inpatient facility that is financed and operated by a county, state, municipality or other unit of government (7)*

HCBS Statewide Transition Plan

HCBS Statewide Transition Plan - Overview

- Statewide Transition Plan - federal requirement (8):
 - States must write a Statewide Transition Plan to describe compliance activities
 - What changes will the state make to meet the new standards in their waiver programs?
- Two phases of the Statewide Transition Plan:
 - Initial Approval
 - Final Approval
- South Carolina has final approval of its Statewide Transition Plan
 - Received Feb. 4, 2020

HCBS Statewide Transition Plan- Overview

- Four primary sections of the plan:
 - Communication & Outreach
 - Describes the public input into the process
 - Systemic Assessment
 - Describes state assessment of the laws, regulations and policies that guide the HCBS program in South Carolina for compliance with findings
 - Assessment of Settings
 - Describes state assessment of settings where HCB services are provided
 - Describes—in detail—actions to come into compliance by March 17, 2023
 - Describes—in detail—actions to maintain compliance after March 17, 2023
 - Heightened Scrutiny
 - Describes HCB Quality Settings Review process
 - Describes process of possible relocation of beneficiaries
- Appendices
- Found at the SCDHHS HCBS website (9)

HCBS Statewide Transition Plan – Revisions

- Section 1, Introduction:
 - Updated table of contents, added appendices (all linked)
 - Updated table to reflect current Statewide Transition Plan revisions
- Section 2, Communication:
 - Inserted update on communication and current public notice
- Section 5, Heightened Scrutiny:
 - Section 5.6.2 updated to reflect current category 3 settings numbers
 - Section 5.7.3 updated to reflect final dates of review and submission to CMS

Heightened Scrutiny Category 3 Settings

Heightened Scrutiny Category 3 Settings

- The state must identify settings that are “presumed to have the qualities of an institution” (10)
- Category 3 settings are settings that may have the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving HCBS
 - South Carolina criteria to identify settings in this category:
 - Setting is a community residential care facility (CRCF) that was formerly an ICF/IID and is physically located next to another CRCF that was also formerly an ICF/IID.
 - Setting is a HUD 811 apartment complex (disability specific complex).
 - Setting has a locked fence around the property.
 - There are three (3) or more HCBS settings clustered together operated by the same provider

Heightened Scrutiny Category 3 Settings *(cont.)*

- HCB Quality Review Process:
 - May also be called “state-level review”
 - Take a closer look at settings that might be like an institution and might isolate people from their community
 - Determine if those settings are:
 - Institution-like, or
 - Home-like and integrated in the community
- Settings determined to be home-like and community-based are sent to CMS to review

Heightened Scrutiny Category 3 Settings *(cont.)*

- Category 3 settings review outcomes:
 - The setting was remediated by July 1, 2021, and will not be submitted to CMS for heightened scrutiny review but still must be publicly listed
 - The setting can be remediated, but not until after July 1, 2021, and must be submitted to CMS by Oct. 31, 2021
- Category 3 settings submitted to CMS must finish making all changes by March 17, 2023
 - These settings are listed in Appendix P of the Statewide Transition Plan (11)

Heightened Scrutiny Category 3 Settings *(cont.)*

SCDDSN's network of settings under Category 3 heightened scrutiny review

Setting Type	Category 3
Day Services/WAC	2
Residential/SLP I	14
Residential/SLP II	26
Residential/CTH II	32
Residential/CLOUD	15
Residential/CRCF	18
TOTAL	107

CRCF = Community Residential Care Facility
CTH II = Community Training Home

SLP II = Supervised Living Program
SLP I = Supported Living Program

WAC = Work Activity Center
CLOUD = Customized Living
Options Uniquely Designed

Heightened Scrutiny Category 3 Settings *(cont.)*

Category 3 settings reviewed and remediated:

Setting Type	Category 3
Day Services/WAC	1
Residential/SLP I	13
Residential/SLP II	23
Residential/CTH II	18
Residential/CLOUD	15
Residential/CRCF	14
TOTAL	84

- Settings are individually listed in Appendix O of the Statewide Transition Plan

Heightened Scrutiny Category 3 Settings *(cont.)*

Category 3 settings to be submitted to CMS submitted for heightened scrutiny review:

Setting Type	Category 3
Day Services/WAC	1
Residential/SLP I	1
Residential/SLP II	3
Residential/CTH II	14
Residential/CRCF	4
TOTAL	23

CRCF = Community Residential Care Facility
CTH II = Community Training Home

SLP II = Supervised Living Program
SLP I = Supported Living Program

WAC = Work Activity Center

Heightened Scrutiny Category 3 settings

SCDDSN settings submitted for heightened scrutiny review:

	Setting Name	Setting Type	Region
1.	Boyd	CTH II	Piedmont
2.	Brentwood Apts.	SLP II	Piedmont
3.	Brown	CTH II	Piedmont
4.	Cain	CTH II	Piedmont
5.	Camp	CRCF	Coastal
6.	Canvasback	CTH II	Coastal
7.	Canvasback	SLP I/II	Coastal
8.	Code	CTH II	Piedmont
9.	Fair Creek	CTH II	Piedmont
10.	Farmington	CRCF	Coastal

CRCF = Community Residential Care Facility
CTH II = Community Training Home

SLP II = Supervised Living Program
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WAC = Work Activity Center



Heightened Scrutiny Category 3 settings, cont'd.

SCDDSN settings submitted for heightened scrutiny review:

	Setting Name	Setting Type	Region
11.	Independence Place AI	CTH II	Pee Dee
12.	Independence Place A2	CTH II	Pee Dee
13.	Independence Place B	CTH II	Pee Dee
14.	Keowee	CTH II	Piedmont
15.	McGowen	CTH II	Piedmont
16.	Nalley	CTH II	Piedmont
17.	Powell	CTH II	Piedmont
18.	Rice Road	CTH II	Piedmont
19.	Tribble Work Activity Center	WAC	Piedmont
20.	Vanguard I	CRCF	Pee Dee
21.	Vanguard II	CRCF	Pee Dee
22.	Woodduck	SLP I/II	Coastal

CRCF = Community Residential Care Facility
CTH II = Community Training Home

SLP II = Supervised Living Program
SLP I = Supported Living Program

WAC = Work Activity Center



Heightened scrutiny – Category 3 settings *(cont.)*

- These settings are being sent for CMS review because:
 - They have not yet fully overcome the presumption of having the qualities of an institution. To overcome the presumption they must demonstrate that people:
 - Are supported to access their community
 - Have individual goals on which they are working
 - Have individual interests in which they are engaged
- Providers are actively working to overcome that presumption and achieve full HCBS compliance by:
 - Aligning agency policies with requirements
 - Training staff (initial and ongoing)
 - Utilizing person-centered practices

Public Comment

- Aug. 23 – Oct. 1, 2021
- Submit Comments:
 - Website:
<https://msp.scdhhs.gov/hcbs/webform/comments-questions>
 - Email: comments@scdhhs.gov
 - Mail to:
Office of Compliance
ATTN: Kelly Eifert, Ph.D.
South Carolina Department of Health and Human Services
P.O. Box 8206
Columbia, SC 29202-8206
- Public comments due by 5 p.m. Oct. 1, 2021

Comments or Questions?

Please visit:

www.scdhhs.gov/hcbs

for information on the HCBS Rule, the public notice and
the Statewide Transition Plan

Resources

- 1) Centers for Medicare and Medicaid Services (CMS) (October 26, 2015). *HCBS, Excluded Settings, and the Heightened Scrutiny Process*. Webinar retrieved from:
<https://www.medicaid.gov/medicaid/hcbs/downloads/hcb-excluded-settings-and-heightened-scrutiny.pdf>
- 2) Code of Federal Regulations, Title 42, Part 441, Subpart G, Section 301(c)(4). Retrieved from: http://www.ecfr.gov/cgi-bin/text-idx?SID=76f3a7cf2f3c96b9b1053ee4a05e818a&mc=true&node=se42.4.441_1301&rgn=div8
- 3) Code of Federal Regulations, Title 42, Part 441, Subpart G, Section 301(c)(4). Retrieved from: http://www.ecfr.gov/cgi-bin/text-idx?SID=76f3a7cf2f3c96b9b1053ee4a05e818a&mc=true&node=se42.4.441_1301&rgn=div8
- 4) Code of Federal Regulations, Title 42, Part 441, Subpart G, Section 301(c)(4). Retrieved from: http://www.ecfr.gov/cgi-bin/text-idx?SID=76f3a7cf2f3c96b9b1053ee4a05e818a&mc=true&node=se42.4.441_1301&rgn=div8

Resources *(cont.)*

- 5) Code of Federal Regulations, Title 42, Part 441, Subpart G, Section 301(c)(5). Retrieved from: http://www.ecfr.gov/cgi-bin/text-idx?SID=76f3a7cf2f3c96b9b1053ee4a05e818a&mc=true&node=se42.4.441_1301&rgn=div8
- 6) Code of Federal Regulations, Title 42, Part 441, Subpart G, Section 301(c)(5). Retrieved from: http://www.ecfr.gov/cgi-bin/text-idx?SID=76f3a7cf2f3c96b9b1053ee4a05e818a&mc=true&node=se42.4.441_1301&rgn=div8
- 7) CMS (Dec. 2014). HCBS Final Regulations: Q & A Regarding HCBS. Retrieved from: <https://www.medicaid.gov/medicaid/hcbs/downloads/q-and-a-hcb-settings.pdf>
- 8) Code of Federal Regulations, Title 42, Part 441, Subpart G, Section 301(c)(6). Retrieved from: http://www.ecfr.gov/cgi-bin/text-idx?SID=76f3a7cf2f3c96b9b1053ee4a05e818a&mc=true&node=se42.4.441_1301&rgn=div8

Resources *(cont.)*

- 9) South Carolina Department of Health and Human Services (SCDHHS) (2020). *HCBS Statewide Transition Plan*. Found at:
<https://msp.scdhhs.gov/hcbs/site-page/hcbs-statewide-transition-plan>
- 10) Centers for Medicare and Medicaid Services (CMS) (October 26, 2015). *HCBS, Excluded Settings, and the Heightened Scrutiny Process*. Webinar retrieved from:
<https://www.medicare.gov/medicaid/hcbs/downloads/hcb-excluded-settings-and-heightened-scrutiny.pdf>
- 11) South Carolina Department of Health and Human Services (SCDHHS) (2020). *Appendix P, HCBS Statewide Transition Plan*. Found at:
<https://msp.scdhhs.gov/hcbs/site-page/hcbs-statewide-transition-plan>

